

The Necessity of Plea Bargaining

by Aaron Mohr

Controversy has swirled around plea bargains in the United States from the time they emerged in the nineteenth century. Since first appearing in Boston, pleas have inspired questions of legality, constitutionality, and fairness (Vogel 204). While such skepticism regarding plea bargains seems reasonable, I believe they provide a useful and obligatory resource in the criminal justice system; and, while reservations exist, sufficient safeguards are in place to protect the rights of defendants.

The right to a jury trial in the United States was established expressly in the Bill of Rights in 1791, but it has been a widespread common law idea since the Magna Carta put it in writing in 1215. The Bill of Rights also protects Due Process, the right to legal counsel, freedom from self-incrimination, and a speedy and public trial, but neither it nor any other early legal documents specifically refer to plea bargains. While it has no concrete legal definition, a plea bargain is loosely defined as a deal between the prosecutor and the defendant, wherein the defendant pleads guilty to a charge less than the original or receives sentencing consideration for pleading guilty to the original charge. Occasionally, such an agreement may be paired with guaranteed information or testimony from the defendant in relation to another case. Since no major legislation on plea bargaining exists, it has fallen largely on the judicial branch to take control and “make law.”

Since 1791, the case law on plea bargaining has set the precedent for acceptable standards, although the courts have not been completely definitive in their acceptance or denial of the right to plea bargain until rather recently. Early cases tended to disallow plea bargaining, while later cases have been more forgiving of the since-established status quo of frequent plea bargaining. For example, in a case before the New York

appellate courts in 1858, *Cancemi versus People*, the defendant had originally waived his right to a full trial (2). The problem arose because there was not a full jury present (2). Upon review by the state supreme court, it was determined that criminal trial procedures were not allowed as much flexibility as civil proceedings, and the original trial was thrown out (6). The significance of the case comes from the fact this case established that a trial could not be denied to the defendant even if the defendant so chose, and further, that criminal cases must follow strict procedures. Although plea bargains were not involved, it became implicit they would be disallowed.

The Supreme Court of Iowa wrote a verdict contrary to that of *Cancemi* in 1879 in the case of *State versus Kaufman*. Similarly to *Cancemi*, the trial was short a juror, and the court wrote, “It may be said that if one juror may be dispensed with, so may all but one, or that such trial may be waived altogether, and the trial had to the court” (2). The court’s reasoning was:

[The defendant] has a constitutional right to a speedy trial, and yet he may waive this provision by obtaining a continuance. A plea of guilty ordinarily dispenses with a jury trial, and it is thereby waived. This, it seems to us, effectually destroys the force of the thought that ‘the State, the public, have an interest in the preservation of the lives and the liberties of the citizens, and will not allow them to be taken away without due process of law’ (2).

Essentially, the court wrote that if other constitutional rights may be waived, why not a jury trial? This statement became a seminal ruling and opened the metaphorical floodgates for courts across the country to allow plea bargaining.

With the process of plea bargaining solidifying, the United States Supreme Court heard a major case on the issue in 1969. Issued in 1970, the Court’s opinion summarized the many advantages of plea bargains:

For a defendant who sees slight possibility of acquittal, the advantages of pleading guilty and limiting the probable penalty are obvious—his exposure is reduced, the correctional processes can begin immediately, and the practical burdens of a trial are eliminated. For the State there are also advantages—the more promptly imposed punishment after an admission of guilt may more effectively attain the objectives of punishment; and with the avoidance of trial, scarce judicial and prosecutorial resources are conserved for those cases in which there is a substantial issue of the defendant's guilt or in which there is substantial doubt that the State can sustain its burden of proof. It is this mutuality of advantage that perhaps explains the fact that at present well over three-fourths of the criminal convictions in this country rest on pleas of guilty (15).

I will return to these benefits later in my argument; for now it should be noted that the Court ruled that plea bargains are not coercive, even when there are great sentencing disparities between a plea bargain and trial, and gave an official nod to the practice.

Of course, the case constituted less than a simple affirmation of plea bargaining, and the issue would return to the high court in the future. Brady remained one of three important Supreme Court cases surrounding the matter in the 1970s. The other two were *North Carolina versus Alford*, and *Bordenkircher versus Hayes*, in 1970 and 1978, respectively. The 1970 case of *North Carolina versus Alford* involved the defendant's guilty plea being judged unconstitutional because it was motivated only by fear of the death penalty, which was not viewed as a valid reason to lighten a sentence (12).

In *Bordenkircher versus Hayes*, the defendant Hayes of Kentucky forged an \$88 check, his third offense, itself punishable by two to ten years in prison. The prosecutor said he would pursue a five-year sentence if there were a guilty plea, but Hayes declined and opted for a trial. The prosecutor then sought punishment under the state's Habitual Criminal Act, carrying a minimum lifetime sentence, of which he was convicted. Hayes

took his case to the Supreme Court, saying his punishment was unfair because it punished him for rejecting the plea deal. The court turned him down saying he was punished for violating the law, not for choosing a trial (8-9).

Various significant points can be taken away from these noteworthy cases. First, they indicate a clear trajectory of the legal system towards increased use of plea bargains, with fewer restrictions and reduced grounds for the defendant to claim that unreasonable coercion is taking place. The courts have more than adequately articulated the advantages of plea bargaining including mitigating punishments for the defendant, spending less time and money on getting criminals off the street, and freeing resources that can be better spent on cases where the outcome might be too close to justify a plea bargain. Appropriately so, the Supreme Court has made clear there are precautions that should be taken, especially when the death penalty is a possible sentence, but the Court approves of the process on the whole.

Others in the legal field have also made strong arguments in favor of plea bargaining. Andrew Hessick and Reshma Saujani split the advantages of bargaining into three categories of benefit: for the prosecution, the defense, and the judge. Efficiency is a benefit for the prosecution insofar as pleas decrease court costs and jury duty, leading to less taxation (192). Reduced costs also allow prosecutors to spend more of their budget on more demanding and challenging cases (193). Perhaps the most important consideration for the prosecutor is the guarantee of conviction, whereby s/he is assured the criminal will be subject to punishment, as compared to the risk in trial of a defendant going free (193).

Money concerns also exist for the defense, but for different reasons. Private defense attorneys want to spend their energy on trials where they stand to make more money, such as advocating for wealthy clients (207-208). They rely on plea bargains to swiftly move along less financially attractive cases, while public defenders rely on a high volume of these less lucrative cases to sustain their practice, and must thus also turn to plea bargains (209). Public defenders face a deluge of cases, and must find creative ways to settle quickly so they can serve as many clients as possible (209). The defense faces pressure from the entire system of attorneys and judges to move expeditiously and may be compelled to accept “trade-outs,” an apparently common practice where “one client of the defense attorney will plead guilty in exchange for leniency for another” (211). Some problems regarding the moral aspects of this practice exist, but it seems to help the perpetrators, so it is of mutual benefit.

Judges receive benefits from plea bargaining as well, even though they remain impartial and neutral by not taking personal stances on sentencing. Obviously plea bargains reduce caseload, or at least streamline the work (227). Plea bargains may serve to raise a judge’s standing or reputation because bargains usually include a waiver of appeal, meaning the ruling the judge enters will not be challenged and possibly overturned in a higher court. This last point appears rather attenuated however, as plea bargaining remains so prevalent that one judge’s number of plea bargains accepted is probably not radically different from the next.

Needless to say, there are many forces at work in the legal system to keep plea bargaining in place. The costs of trial—both time and money—and other factors make plea bargains attractive to all parties involved, including the prosecution, the defense, and

the judge, justice, or magistrate. From the eyes of the people as well, fewer plea bargains would result in more jury duty and consequently higher taxpayer costs—two of the most despised functions of government. Although most mainstream defenses of plea bargaining cite its efficiency, some arguments oppose plea bargaining on a more ideological or moral ground.

White collar and organized crime inevitably rise to the surface of the debate surrounding plea bargains. Those opposed to plea bargaining contend too much sentencing leniency is granted in order to catch criminals at the top of organized crime rings. The opposition's argument refers to those who are lower on the criminal ladder being let off with very light sentences—often times even immunity—in order to secure testimony that incriminates leaders (Natapoff 992). As with plea bargaining in general, those with testimony benefit more than anyone else. Pleas are necessary though, to incriminate the decision makers in such institutions where “victimless crimes” occur. They are often the most conniving criminals and the hardest to catch, so pleas are hardly a disservice to the people they wrong. Without such testimony, “the government is in a poor position to obtain incriminating information without inside help” (993). It is not without potential problems though, as “not only is it famously unreliable, but it is colored by the choices made by informants themselves, who may identify others in order to further their own criminal or personal desires” (994).

Military tribunals and international crimes have been another central point of contention in the debate over plea bargains. Regarding cases of war crimes, there is a public expectation of due dessert: the judicial idea that each crime has a unique punishment, and pleas certainly seem to betray that if an international criminal is able to

bargain down his/her sentence in exchange for testimony or other useful information. While these international criminals may truly be evil people, it is hard to dispute the efficacy of plea bargaining. Genocide and other crimes against humanity are very difficult to prosecute in traditional ways because of the unique nature of the charges (Combs 99). Prosecutors must often prove murders not only occurred, but that they were part of a larger scheme of attack against the population (99). “Whereas the typical domestic criminal case concerns one crime committed in one specific location, Tribunal trials often concern widespread atrocities occurring in many locations and taking place over a period of months” (99-100). The quandaries of how to obtain evidence and witnesses in war crimes can be daunting, arduous, and expensive. When these crimes occur over several years, as is often the case, the above challenges are difficult to overcome because prosecutors must rely on the countries to voluntarily supply access to resources used as evidence (96). Such a steep slope in punishing war criminals leaves no doubt in my mind of the need and usefulness of plea bargaining.

After evaluating all these circumstances, I believe pleas are necessary for the functioning of the system and could not be realistically eliminated. Bargaining is effective in keeping the judicial system moving along at an appropriate pace. Financially, it provides the benefit of money saved—for taxpayers, lawyers, and defendants, in addition to reducing the effect of costs on the outcome of the case because bargaining lessens the defendant’s need of a lawyer if the defendant can plead quickly. Furthermore, pleas in exchange for testimony are essential for victimless crimes (i.e., white-collar and drug crimes) because the police must have a means of gathering information about such delinquencies.

Adding to these benefits, adequate limits on pleas exist to protect defendants who agree to plea bargains. The Supreme Court has maintained that coercion is not acceptable, especially in death penalty cases, and judges are required to ensure the defendant knows what he is agreeing to with a given plea (“An Unjust Bargain” 876). Defendants gain additional negotiating power with plea bargains, and many retain the right to appeal, although this can be waived in some situations. Because plea bargains aid in the expedient and fair resolution of criminal cases, pleas must be continued in order to maintain functioning state and federal judicial systems.

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